

Memorandum of Decision: 04-20200126R
Sales Tax
For the 2019 Tax Year

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

The Department improperly taxed the purchase of a vehicle at Indiana's tax rate instead of Ohio's tax rate. Individual's refund claim is granted.

ISSUE

I. Sales Tax - Imposition.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-2-3; IC § 6-2.5-4-1; IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 2.2-2-1](#); Sales Tax Information Bulletin 84 (August 2014); Ohio Code § 5739.02.

Taxpayer protests the assessment of sales tax on her purchase of a motor vehicle.

STATEMENT OF FACTS

Taxpayer is an individual who purchased a vehicle from an Indiana dealership and paid sales tax at the time of purchase. Taxpayer's vehicle was then immediately transported to her home state of Ohio, where it was registered with the Ohio Bureau of Motor Vehicles. The next month, Taxpayer filed a refund request, stating that the sales tax collected at the time of purchase was at the Indiana rate instead of the Ohio rate. The Indiana Department of Revenue ("Department") denied this request because it did not receive documentation showing that the vehicle at issue had actually been registered in Ohio. Taxpayer filed a subsequent protest and provided documentation which resolved the protest prior to a formal hearing being held. This Memorandum of Decision results.

I. Sales Tax - Imposition.

DISCUSSION

All tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." *Id.* "The retail merchant shall collect the tax as agent for the state." *Id.*

Sales of vehicles in Indiana generally are subject to Indiana sales tax unless the transactions are specifically exempt under Indiana law. The sales tax treatment of a vehicle changes slightly, however, when the vehicle is

purchased to be immediately transported out of state for use outside of Indiana. IC § 6-2.5-2-3 explains the tax implications of this situation:

(a) As used in this section, "motor vehicle" means a vehicle that would be subject to the vehicle excise tax imposed under [IC 6-6-5](#) if the vehicle were to be used in Indiana.

(b) Notwithstanding section 2 of this chapter, *the state gross retail tax rate on a motor vehicle that a purchaser intends to:*

(1) *transport to a destination outside Indiana within thirty (30) days after delivery; and*

(2) *title or register for use in another state or country;*

is the rate of that state or country (excluding any locally imposed tax rates) as certified by the seller and purchaser in an affidavit satisfying the requirements of subsection (c).

(c) The department of state revenue shall prescribe the form of the affidavit required by subsection (b). In addition to the certification required by subsection (b), the affidavit must include the following:

(1) The name of the state or country in which the motor vehicle will be titled or registered.

(2) An affirmation by the purchaser under the penalties for perjury that the information contained in the affidavit is true.

(3) Any other information required by the department of state revenue for the purpose of verifying the information contained in the affidavit.

(d) The department may audit affidavits submitted under this section and make a proposed assessment of the amount of unpaid tax due with respect to any incorrect information submitted in an affidavit required by this section.

(Emphasis added).

Specifically, IC § 6-2.5-2-3 allows purchasers who purchase qualified motor vehicles in Indiana but intend to title and register the vehicles to be used in states other than Indiana (within 30 days after the sale) to pay the sales tax rate of the state for which the vehicles are ultimately titled, registered, and used. The Department's Sales Tax Information Bulletin 84 (August 2014), 20140827 Ind. Reg. 045140329NRA ("Information Bulletin 84") further explains the computation of the sales tax concerning the qualified Indiana sales.

INTRODUCTION

As a general matter, the sales tax rate imposed on all retail transactions in Indiana is [seven (7) percent]. However, the General Assembly has enacted legislation (SEA 0367-2014) specifically directed toward the sales of vehicles to individuals or entities that intend to title and register the vehicle for use in another state or country. Effective July 1, 2014, the sales tax rate imposed on such sales is the state-level sales tax rate of the state in which the vehicle will be titled and/or registered.

DEFINITIONS

The term "motor vehicle" means a vehicle that would be subject to the annual license excise tax imposed under [IC 6-6-5](#) if the vehicle were to be used in Indiana. This includes cars, motorcycles, and trucks weighing 11,000 pounds or less. This does not include motor homes; trucks weighing greater than 11,000 pounds; or trailers.

DETERMINATION OF THE TAX RATE

Beginning on July 1, 2014, when the purchaser of a motor vehicle intends to both (a) transport that motor vehicle to a destination outside Indiana within 30 days after delivery, and (b) title and register that motor vehicle for use in another state or country, the rate at which sales tax is to be imposed and collected on the sale is the rate of the intended destination state or country.

The sales tax rates of the other states are inclusive of only state-level rates. Any locally imposed sales tax rates in the other states are not included in the rates Indiana dealers will be required to collect. Additionally, *the statutory language of IC [§] 6-2.5-2-3 requires the application of the destination state's state-level sales tax rate only to the sale of a motor vehicle that is to be titled and registered for use in another state. Accordingly, the destination state's sales tax rate is the only aspect of that state's laws that will be incorporated by virtue of IC [§] 6-2.5-2-3. The statute does not require the incorporation of other aspects of a state's laws relating to transactions involving vehicles.*

...

An Indiana dealer will only be required to collect sales tax at the destination state's rate up to Indiana's rate of

[seven (7) percent]. Regardless of whether the destination state's or country's rate is greater than [seven (7) percent], the maximum sales tax rate to be imposed on the purchase of a vehicle from an Indiana dealer is [seven (7) percent].

If the destination state does not impose a sales tax, either in general or on purchases of vehicles, then no sales tax is to be collected by the Indiana dealership.

• **Example [2]:** Customer, who is a resident of Montana, comes into Indiana to buy a motor vehicle from a dealership in Indiana. Customer intends to title and register the vehicle for use in Montana. Currently, Montana does not impose any sales tax. As such, the Indiana dealership would not have to charge Customer any sales tax on the purchase of the motor vehicle (though Customer and the dealership would still have to fill out the ST-108NR).

• **Example [3]:** Customer, who is a resident of Georgia, comes into Indiana to buy a motor vehicle from a dealership in Indiana. Customer intends to title and register the vehicle for use in Georgia. In Georgia, the state's sales tax is not imposed on purchases of vehicles, but the state does impose an ad valorem tax on such purchases. Because an ad valorem tax is not a sales tax, the Indiana dealership would not be required to collect sales tax at the Georgia ad valorem tax rate. Furthermore, because Georgia's sales tax is not imposed on purchases of motor vehicles, the Indiana dealership would not collect sales tax at any rate (though Customer and the dealership would still have to fill out the ST-108NR).

Lastly, these statutes and the administration thereof apply only to transactions that are sourced to Indiana pursuant to IC [§] 6-2.5-13 *et seq.* More to the point, these statutes apply only to intrastate transactions in which the customer actually receives the vehicle here in Indiana. Nothing about this statutory regime impacts transactions that are in interstate commerce.

(Emphasis added.)

Ohio has a sales tax rate of five and three-fourths percent. Ohio Code § 5739.02. Taxpayer provided the Ohio Certificate of Registration and the sales receipt, showing the vehicle had been registered in-person with the Ohio BMV less than 30 days after its purchase. Because the vehicle was transported to and registered in Ohio within 30 days of purchase, the correct sales tax rate on the purchase is Ohio's rate of five and three-fourths percent. Taxpayer also provided the vehicle purchase order, showing that seven percent tax was paid on the vehicle at the time of purchase. Taxpayer's refund request is granted and she should be refunded the one and one-fourth percent overpayment of sales tax.

FINDING

Taxpayer's refund request is granted.

June 2, 2020

Posted: 08/26/2020 by Legislative Services Agency
An [html](#) version of this document.